

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

Beverly and Ronald S.,	:	
	:	
Plaintiffs,	:	
	:	Case Number: 1:06CV385
vs.	:	
	:	District Judge Susan J. Dlott
Rebecca Bryant, et al.,	:	
	:	ORDER DISMISSING PLAINTIFFS'
Defendants.	:	CLAIMS WITH PREJUDICE

This matter is before the Court upon the motion of counsel for Plaintiffs to withdraw.

(Doc. 14.) In that motion, Plaintiffs' counsel claimed that Plaintiffs refused to cooperate during the discovery period and failed to respond to his efforts to contact them. Due to the breakdown in the attorney-client relationship, counsel for Plaintiffs requested leave to withdraw. On December 13, 2006, the Court issued an order setting a hearing date for February 7, 2007 at 10:00 a.m. (Doc. 15.) The Court further ordered Plaintiffs' counsel to advise Plaintiffs of the hearing by certified mail, and stated that "Failure of plaintiffs to appear may be grounds for dismissal of this action for want of prosecution." (Id.)

The Court held a hearing on Plaintiffs Counsel's motion to withdraw on February 7, 2007 as scheduled. Counsel for both parties were present; however, Plaintiffs failed to appear. At the hearing, Plaintiffs' counsel represented to the Court that he has not heard from Plaintiffs since sometime in the Fall of 2006, despite repeated attempts to contact them. He further represented that he had served Plaintiffs with notice of the hearing by certified mail and that he had attempted to notify Plaintiffs of the hearing several times by phone.

Counsel for Defendants asked that the Court dismiss the instant suit with prejudice,

noting that this is the second time Plaintiffs have filed suit against Defendants and failed to respond to requests for discovery. Plaintiffs originally filed suit against Defendants in the Hamilton County Court of Common Pleas. After refusing to participate in discovery, Plaintiffs voluntarily dismissed the suit without prejudice. Plaintiff subsequently refiled their suit, and Defendants removed the action to this Court. (See Doc. 1.) Once again, Plaintiffs have refused to participate in discovery.

Pursuant to Rule 41(b) of the Federal Rules of civil Procedure, the Court may dismiss Plaintiff's suit “[f]or failure . . . to prosecute or to comply with these rules or any order of court.” The Court finds that Plaintiffs' failure to participate in discovery or otherwise prosecute this suit has severely prejudiced Defendants. Plaintiffs have now forced Defendants to defend not just one, but two lawsuits. In each case, Plaintiffs appear to have filed suit and then disappeared. Accordingly, the Court dismisses Plaintiffs' claims with prejudice.

IT IS SO ORDERED.

s/Susan J. Dlott  
Susan J. Dlott  
United States District Judge